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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/879,494      | 06/12/2001  | Carol B. Gell        | PPC-787             | 5028             |

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT      PAPER NUMBER

3761

DATE MAILED: 01/30/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

|                               |                             |
|-------------------------------|-----------------------------|
| Application No.<br>09/879,494 | Applicant(s)<br>GELL ET AL. |
| Examiner<br>C. Lynne Anderson | Art Unit<br>3761            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 05 November 2003.
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 23-28 is/are allowed.
- 6)  Claim(s) 1-11, 14, 15, 19 and 21 is/are rejected.
- 7)  Claim(s) 12, 13, 16-18, 20 and 22 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 14-15, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson et al. (4,596,570).

Jackson discloses a feminine hygiene pad 10, as shown in figure 1, comprising a main pad body 14 having an absorbent core 16, a cover material 22, and a barrier layer 24. The pad 10 has front and rear ends 20, a first face 14, and a second face 12. The pad 10 is to be worn in close proximity to the vagina of a wearer, and is capable of being positioned so as not to significantly extend beyond the anterior portion of the perineum. The pad 10 further comprises a strip 28 that is substantially planar and has a smaller thickness than the main pad body, as shown in figure 4. The strip 28 extends rearwardly from the rear end 20 of the main pad body, terminating at a distal end and having a length. The strip 28 is fully capable of being received between the buttocks of the wearer, and comprises an adjustment means in the form of a series of fold lines 30 such that the length of the strip 28 may be adjusted, as shown in figure 1.

With respect to claim 2, the main pad body is between 8 and 13.1 cm in length, as disclosed in column 5, lines 10-11.

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With respect to claim 3, the strip 28 is less than 1 cm in thickness, as disclosed in column 5, lines 26-31 and 49-50.

With respect to claim 4, the strip 28 has a width approximately equal to its length, as shown in figure 4. The length of the strip 28 is about 2.5 cm, as disclosed in column 5, line 16, and therefore had a width of about 2.5 cm.

With respect to claim 5, the second face 12 comprises an area of adhesive 26, as shown in figure 1.

With respect to claim 6, the pad 10 further comprises a front flap 28', as shown in figure 1, extending forwardly from the front end 20 of the main pad body and having a distal end.

With respect to claim 7, the front flap 28' is stretchable, as disclosed in column 5, lines 3-9.

With respect to claim 8, the distal end of the front flap 28' contains an area of adhesive 26', as shown in figure 4, for attaching the distal end to an undergarment.

With respect to claim 9, the distal end of the front flap 28' contains an area of adhesive 26', as shown in figure 4, which is fully capable of being attached to the wearer's body.

With respect to claim 10, the strip 28 is flexible, as shown by its ability to be folded.

With respect to claim 11, the adjustment means, the fold lines 30, are nonelastic.

With respect to claims 14 and 15, the adjustment means comprises a section of the strip 28 being folded into multiple pleats, as disclosed in column 4, lines 50-58. The

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pleats are held in place by means of an adhesive 26', as shown in figure 4, secured to a sheath 29, as shown in figure 1.

With respect to claim 19, the effective length of the strip 28 is adjustable by the wearer attaching the strip by strip attachment means 26' at a point on the strip 28 between the proximal and distal ends of the strip, as shown in figure 4.

With respect to claim 21, the strip attachment means 26' comprises an adhesive swatch.

### ***Allowable Subject Matter***

The indicated allowability of claims 14, 15, 19, and 21 is withdrawn in view of the newly discovered reference(s) to Jackson et al. (4,596,570). Rejections based on the newly cited reference(s) are above.

Claims 23-28 are allowed.

Claims 12-13, 16-18, 20, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,632,210. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application is broader than claims 1 and 2 of Glasgow (-210), as Glasgow (-210) further discloses a front flap.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 6,613,031 and 4,753,648 pertain to pads having adjustable strips extending from their distal ends.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

*cla*  
cla  
January 22, 2004

*Glenn K. Dawson*  
GLENN K. DAWSON  
PRIMARY EXAMINER